**S.B. CIVIL WRIT PETITION NO.5755/2006.**

Banta Singh & Anr.
Vs.
Workmen's Compensation Commissioner, Sriganganagar & Anr.

Date of Order :: 8th October 2007.

**HON'BLE MR. JUSTICE DINESH MAHESHWARI**

Mr. R.S. Saluja, for the petitioners.
Mr. R.S. Choudhary, for the respondent No.2.

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**BY THE COURT**:

By way of this writ petition, the petitioners have questioned the procedure adopted by the Workmen's Compensation Commissioner, Sriganganagar ('the Commissioner') while dealing with Claim Case No.5/2001 whereby the learned Commissioner has ordered that the objection regarding territorial jurisdiction as raised by the petitioners-non-applicants shall be considered at the time of final decision of the matter.

It appears from the material placed on record that the respondent No.2 has filed an application (Annex.1) before the respondent No.1, Commissioner on 02.02.2001 seeking compensation against the petitioners with the averments that he was engaged as agricultural labourer with the petitioners and sustained personal injury on 15.10.2000 while cutting fodder on a thresher when his right arm got struck in the

machine that led to amputation from elbow and resulted in 100% loss of earning capacity.

According to the petitioners, immediately after receiving notices of the aforesaid application for compensation, they submitted before the Commissioner by way of an application dated 28.03.2003 (Annex.2) that the alleged incident occurred within the territorial jurisdiction of the courts at Hanumangarh and both the parties were residing at Hanumangarh besides raising other objection that the application as made by a minor was not competent when his age has been stated at 15 years. The petitioners have placed on record a typed copy of the order sheet dated 28.03.2003 (Annex.3) whereby the Commissioner observed on such application that the same would be decided at the time of final decision. The petitioners have also placed on record certified copy of the order dated 26.07.2006 (Annex.4) whereby, after hearing the parties on the said application dated 28.03.2003, and with reference to the earlier order, the learned Commissioner observed that the point raised in the application shall be decided with the judgment after evidence of both the parties; and directed the petitioners to file their reply.

It is contended on behalf of the petitioners that they hold agricultural land at Chak 14 MKS, Tehsil Sangaria, District Hanumangarh and not at any other place; that the question of

territorial jurisdiction in the present case ought to have been decided by the learned Commissioner right at the inception when the claim application was made to him; and at any rate, such objection regarding territorial jurisdiction, when raised by the petitioners at the initial stage, ought to have been decided before any other proceedings in the case. According to the petitioners, postponing of such issue till final judgment is likely to cause prejudice inasmuch as, if it were decided against them and an order granting compensation were made against them, the appeal against such an order would not be competent without deposit of the amount awarded. Learned counsel appearing for the contesting respondent has supported the procedure adopted by the learned Commissioner and submitted that the matter remains within the territorial jurisdiction of the learned Commissioner; that the question of jurisdiction has not been raised by the petitioners with any specific pleading; and that in any case, the issue does not relate to inherent lack of jurisdiction and no case is made out for interference in writ jurisdiction.

Having given a thoughtful consideration to the rival submissions and having examined the law applicable to the case with reference to the record, this Court is of opinion that the procedure adopted by the learned Commissioner cannot be approved.

The requirements of the procedure for dealing with an application of the present nature as laid down in Part V of the Workmen's Compensation Rules, 1924 ('the Rules of 1924') makes it clear that if it appears to the Commissioner on receiving an application that it should be presented to another Commissioner, he would return the same endorsing upon it the date of presentation and return, the reasons for returning, and designation of the Commissioner to whom it should be presented. If it appears to the Commissioner at any subsequent stage that the application should have been presented to another, he would send the application to the Commissioner empowered to deal with it while informing the parties concerned.

Learned counsel for the petitioners has referred to the provisions of the Workmen's Compensation (Venue of Proceedings) Rules, 1996; Rule 3 and 4 whereof read as under:

> "**Rule 3. Processing of an application.**-(1) An application under section 19 or section 22 shall be proceeded before or by a Commissioner for the area in which-
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> (a) the accident took place which resulted in the injury; or
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> (b) the workmen or in case of his death the dependants claiming the compensation ordinarily reside; or
>
> (c) the employer has his registered office :

Provided that no matter shall be processed before or by a Commissioner other than the Commissioner having the jurisdiction over the area in which the accident took place without his giving notice in Form-A to the Commissioner having jurisdiction over the area and the State Government concerned.

(2) The Commissioner under section 21(1)(b) or (c) may initiate proceedings afresh or he may continue the previous proceedings initiated under section 21 (1)(a) as if the same or any of its part had been taken before him if he is satisfied that the interest of the parties shall not thereby be prejudiced.

**Rule 4.Transfer of records or money.-**(1) If any matter under the Act is required to be processed before or by a Commissioner other than the Commissioner having jurisdiction over the area in which the accident took place the former may for the proper disposal of the matter call for in Form B a detailed report including transfer of any records or money remaining with the latter and on receipt of such a request he shall comply with the same :

Provided that if any further enquiry is necessary in the area in which the accident took place for framing of issues or for determining the amount of compensation, the Commissioner, before whom the application has been filed, may require the Commissioner of the area in which the Accident took place to conduct such enquiries and to serve such notices or orders as may be necessary for the purpose of such enquiries.

(2) Money deposited with one Commissioner under section 8 shall be transmitted to another Commissioner either by remittance transfer receipt or by money order or by bank cheque.

It is noticed from the contents of the application Annexure-1 that the claimant has stated his place of residence at Sriganganagar. The petitioners have not pointed out any other place of the residence of the claimant. The averment in the application (Annex.2) that both the parties are residing at Hanumangarh is vague and incomplete, particularly in relation to the residence of the claimant. In view of the fact that the claimant has asserted his place of residence at Sriganganagar, it cannot be said at the outset that the claim application is not of the jurisdiction of the said Commissioner at Sriganganagar.

However, it is noticed from the contents of the application Annexure-1 that the claimant has not stated the area in which the accident occurred; and looking to the requirements of the proviso to rule 3 of the Rules of 1996, if the matter is being processed by the Commissioner other than the Commissioner having the jurisdiction over the area in which the accident took place, he is required to give notice in Form A to the Commissioner having jurisdiction over the area, and to the State Government concerned. Such requirements obviously call for determination, at the earliest, of the question regarding the area in which the accident occurred. Further requirements of rule 4 of the Rules of 1996 and those of rule 22 of the Rules of 1924 also indicate that determination of

such question regarding place of accident is ordinarily not to be deferred until final decision of the matter.

Having regard to the requirements of the Rules of 1924 and the Rules of 1996; and having regard to the facts and circumstances of this case, this Court is of opinion that further proceedings in the matter being obviously dependent on determination of the question regarding the area in which the accident occurred, such question ought to be determined at the earliest by the learned Commissioner; rather the same ought to have been decided at the very inception of the proceedings, and in any case, ought to have been decided when an objection was raised by the petitioners; and there appears no reason as to why such question has not been decided by the Commissioner. The orders impugned deserve to be modified to this extent that before proceeding further, learned Commissioner ought to decide the question regarding the area in which the accident occurred.

It is noticed that the application made by the respondent-claimant as back as in the year 2001 still remains pending at the stage where only the reply has been filed by the non-applicants. It is expected of the learned Commissioner to take up the matter in priority and proceed further with promptitude curbing against unnecessary delay.

In the result, the writ petition is allowed to the extent that the impugned orders dated 28.03.2003 and 26.07.2006 stand modified and the Commissioner shall determine the question about the area in which the accident took place at the first; and then proceed in accordance with law keeping in view the observations made hereinabove. No costs.

**(DINESH MAHESHWARI), J.**

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